

IN THE U.S. PATENT AND TRADEMARK OFFICE

In re U.S. Patent Application of:

APPLICANT: K. Barmak et al.

SERIAL NO.: 10/674,853

FILING DATE: 9/29/2003

EXAMINER: Graybill, David E.

ART UNIT: 2894

ATTORNEY'S DOCKET NO.: YOR920030338US1

TITLE: ATOMIC LAMINATES FOR DIFFUSION BARRIER APPLICATIONS

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Interview Summary

This paper is herewith filed in response to the Interview Summary mailed on August 4, 2008, for the above-captioned U.S. Patent Application. This paper is deemed to be filed within the shortened statutory period and no petition or fee for an extension of time is required. However, should the undersigned attorney be mistaken, please consider this a petition for any extension of time that may be required to maintain the pendency of this Patent Application, and charge deposit account no.: 50-0510 for any required fee deficiency.

Telephone Interview

In the telephone interview held of July 31, 2008, 2 P.M., Primary Examiner David Graybill and Applicant's Representative Walter Malinowski, the Examiner indicated that the proposed amendment of the claims to no longer recite "consist of" would overcome the 35 U.S.C. 112, first paragraph, rejection based on written description. When Applicant's representative asked how the claims could be placed in condition for allowance or placed in the best form for appeal, the Examiner indicated that he considered identifying allowable subject matter and making suggestions as how to place claims in the best form for allowance to be part of his duties that he practices. As an example, he did suggest that the claims may be made allowable by reciting layers not disclosed in the prior art or by excluding the prior art by negative limitations. He did not consider recitation of the term "consisting of" in the claims to satisfy the written description requirement under 35 U.S.C. 112, first paragraph. The Examiner considers the word "are" to be the same as "comprising" and would look to the case law for the meaning of "are." The Examiner referred to words which are inclusive and open-ended and words which are exclusive. Applicant's representative indicated that the words have different meanings and that the meaning of "are" is narrower than the meaning of "comprising," but the Examiner remained unconvinced.

As noted in the Interview Summary mailed August 4, 2008, by the USPTO, the references Toyoda and Hegde were discussed.

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Our Ref: YOR920030338US1 - - 909A.0139.U1(US)

Respectfully submitted:

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September 4, 2008

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. BOX 1450, Alexandria, VA 22313-1450.

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